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SERVICE DATE – DECEMBER 19, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34125 (Sub-No. 1)]

South Dakota Railroad Authority—Acquisition and Operation Modification

Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to amend existing operating rights of the South Dakota Department of Transportation, successor in interest to the South Dakota Railroad Authority (User), at Aberdeen, SD, pursuant to an amendment (Amendment) to an existing agreement. Pursuant to the Amendment, BNSF has agreed to grant User and its designee the right to interchange traffic on and/or via BNSF-owned trackage at Aberdeen in connection with the movement of the traffic to, from, or via User's tracks between Kidder, SD, and Aberdeen, SD (the "Rail Line") pursuant to the terms outlined below.

(1) Subject to all other applicable terms and conditions set forth in the Amendment, BNSF shall permit the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and User or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line (as that is defined in an agreement between the parties) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in the Amendment, BNSF shall permit DM&E and User or its designee to interchange with one

another at Aberdeen Yard or on the State-owned trackage north of Aberdeen via the Interchange Access Line for traffic originating or terminating on DM&E in South Dakota, moving to or from points served by Canadian Pacific Railway's (CP's) network as it existed as of April 25, 2005, in (a) North Dakota (not including the Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot), and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); provided such rights shall extend only to movements of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest products, and provided further that such rights shall be subject to certain unit train restrictions for North Dakota points as set forth in the Amendment.

(3)(a) Subject to all other applicable terms and conditions set forth in the Amendment and other agreements between BNSF and User, BNSF shall permit User or its designee to interchange with lessees and operators of State-owned rail lines (as hereinafter defined) all traffic (excluding coal and intermodal traffic) originating or terminating on said State-owned rail lines.

(3)(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by BNSF in haulage service for said operators/lessees pursuant to terms of a haulage agreement, the interchange with BNSF or the Rail Line operator shall occur at Aberdeen Yard (or other location in the Aberdeen vicinity at BNSF's discretion) on trackage designated by BNSF. In the event that the traffic is being moved to the Rail Line by the operators/lessees pursuant to exercise of trackage rights over BNSF trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees

request to interchange at Aberdeen Yard and BNSF local operating personnel consent thereto, at such tracks in Aberdeen Yard as may be designated by BNSF.

(3)(c) “State-owned rail lines” as referenced herein refer to the Mitchell, SD-Kadoka, SD Line and the Napa, SD-Platte, SD Line as those lines existed as of April 25, 2005, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, “extensions” means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from the Rail Line of, rail traffic moving to/from new industries located on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided above, User or its designee shall not move, or cause or allow to be moved, on, over, or via the Rail Line or the Interchange Access Line, traffic that neither originates nor terminates on the Rail Line.

The trackage rights granted by BNSF were scheduled to become effective on or after December 6, 2005. The purpose of the trackage rights is to allow User to have expanded interchange rights at Aberdeen.

As a condition to the exemption invoked by User, any employees affected by the trackage rights granted to User in STB Finance Docket No. 34125 (Sub-No. 1) will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653, 664 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under

49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34125 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on User's representative: Michael J. Barron, Jr., FLETCHER & SIPPEL LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2875.

Board decisions and notices are available on its website at "WWW.STB.DOT.GOV."

Decided: December 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary